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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92062364
Party	Defendant Raihana Heuer
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Date	05/05/2016
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

In re the matter of:

Trademark Registration Nos:
4078032, 4052051 and 4717526

For the Marks:
KANDUI and KANDUI VILLAS

Anom Suheri, et. al,

Petitioners

v.

Raihana Heuer,

Registrant

Proceeding No.: 92062364

FIRST AMENDED ANSWER

Registrant, Raihana Heuer (“Registrant”), hereby submits its Answer to the Petition for Cancellation (“Petition”) filed by Petitioners, Anom Suheri, Raymond Wilcoxon, Anthony Marcotti, and D3 Holdings, LLC (together, the “Petitioners”) on September 29, 2015 as follows:

1. Registrant denies the allegations contained in Paragraph 1 of the Petition except that Registrant admits that Karangmajat Island is located in the remote archipelago known as the Mentawai Islands, a region world famous for perfect surfing waves.

2. Registrant denies the allegations contained in Paragraph 2 of the Petition.

3. Registrant is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 3 of the Petition and on that basis denies the allegations therein.

4. Registrant admits that the Kandui Resort welcomed its first guests on April 9, 2006, who were from the United States. Registrant denies the remaining allegations contained in Paragraph 4 of the Petition.

5. Registrant admits the allegations contained in the first sentence of Paragraph 5 of the Petition and denies the remaining allegations contained in Paragraph 5 of the Petition.

6. Registrant admits the allegations contained in Paragraph 6 of the Petition.

7. Registrant admits the allegations contained in Paragraph 7 of the Petition.

8. Registrant admits the allegations contained in Paragraph 8 of the Petition.

9. Registrant admits the allegations contained in Paragraph 9 of the Petition.

10. To the extent that Paragraph 10 of the Petition contends that Registrant named its resort Kandui Villas, it is admitted; Registrant denies the remaining allegations contained in Paragraph 10 of the Petition.

11. Registrant admits the allegations contained in Paragraph 11 of the Petition.

12. To the extent that Paragraph 12 of the Petition contends that Registrant applied to register the trademarks KANDUI and KANDUI RESORT, it is admitted; to the extent that Paragraph 12 of the Petition recites details of the registrations at issue, Registrant admits that it is a partial recitation of the details of the registrations at issue; Registrant denies the remaining allegations contained in Paragraph 12 of the Petition.

13. To the extent that Paragraph 13 of the Petition contends that the domain www.KanduiVillas.com was registered on September 12, 2007, it is admitted. Registrant denies the remaining allegations contained in Paragraph 13 of the Petition.

14. To the extent that Paragraph 14 of the Petition contends that Kandui Villas promotes its resort to United States citizens and that Kandui Villas owns and maintains social media accounts on Facebook®, Twitter®, and Instagram®, it is admitted. Registrant denies the remaining allegations contained in Paragraph 14 of the Petition.

15. To the extent that Paragraph 15 displays the marks of Kandui Resort and Kandui Villas, Registrant admits this. Registrant denies the allegations contained in Paragraph 15 of the Petition and in particular denies that Petitioners own the KANDUI RESORT mark displayed under “Petitioners” and further denies any allegation that a side-by-side comparison is the appropriate analysis in determining a likelihood of confusion.

16. Registrant denies the allegations contained in Paragraph 16 of the Petition.

17. Registrant denies the allegations contained in Paragraph 17 of the Petition.

18. Registrant denies the allegations contained in Paragraph 18 of the Petition.

19. Registrant denies the allegations contained in Paragraph 19 of the Petition.

20. Registrant denies that Johnny Ocean owned common law rights in the KANDUI and KANDUI RESORT marks; Registrant is without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 20 of the Petition and on that basis denies the allegations therein.

21. Registrant denies the allegations contained in Paragraph 21 of the Petition.

22. Pursuant to the Board's ruling on Registrant's motion to dismiss, Paragraph 22 of the Petition has been stricken. (Docket No. 9)

23. Registrant denies the allegations contained in Paragraph 23 of the Petition.

24. Registrant denies the allegations contained in Paragraph 24 of the Petition.

AFFIRMATIVE DEFENSES

First Affirmative Defense ***Estoppel - Waiver***

1. Registrant asserts that Petitioners have waived any claim(s) against Registrant arising out of the matters alleged in the Petition as Petitioners consented to and participated in Registrant's use of the marks at issue.

2. Petitioners have all, with knowledge of Respondent's rights in the mark(s) and ownership of the registrations at issue, promoted, supported, and benefited from Respondent's use of the mark in association with the Kandui Resort and Kandui Villas including through Petitioners' managing the resort, promoting trips, marketing the resort and booking guests.

Second Affirmative Defense ***Estoppel - Acquiescence***

3. Registrant asserts that the Petition and its claim(s) for relief therein are barred by the doctrine of acquiescence.

4. Petitioner's conduct expressly and by clear implication consented to, encouraged, or furthered the activities of the Registrant. Therefore, petitioners are stopped from prohibiting conduct that it fostered or tolerated, as the result would be prejudicial to Registrant.

5. Petitioners have all, with knowledge of Respondent's rights in the mark(s) and ownership of the registrations at issue, promoted, supported, and benefited from Respondent's use of the mark in association with the Kandui Resort and Kandui Villas including through Petitioners' managing the resort, promoting trips, marketing the resort and booking guests

Third Affirmative Defense ***Laches***

6. Registrant asserts that the Petition and its claim(s) for relief therein are barred by the doctrine of laches. Petitioners have had actual or constructive knowledge of Registrant's rights since at least as November 8, 2011 and at least as early of a time that such delay by Petitioners in

asserting their alleged rights was undue and unreasonable. Registrant relied on Petitioners non-assertion of their alleged rights and has been prejudiced as a result of the undue or unreasonable delay by Petitioners in asserting their alleged rights.

WHEREFORE, Registrant believes that Petitioners will not be damaged by the registration of Registrant's mark, and prays that the Trademark Trial and Appeal Board dismiss with prejudice the Petition to cancel Registrant's marks for KANDUI and KANDUI VILLAS.

Respectfully submitted,

Date: May 5, 2016

/lmh/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **FIRST AMENDED ANSWER** was served on Petitioners **Anom Suheri, Anthony Marcotti, Raymond Wilcoxon and D3 Holdings, LLC** by mailing said copy on May 5, 2016, via US Postal Service, First Class postage prepaid to its counsel of record in this case as follows:

Counsel of Record:

Joshua Richman
IPLA, LLP
4445 Eastgate Mall, Ste 200
San Diego, CA 92121
United States

with courtesy copy via electronic mail to counsel's email address of record to:

litigation@ipla.com

By: /lmh/
Lindy M. Herman, Esq.